

RULES OF FORENSIC TACTICS FOR CONDUCTING SEARCHES IN THE CASE OF OFFENCES OF ILLICIT DRUGS TRAFFICKING AND USE

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Abstract

The article presents and analyzes the main tactical rules used by investigators during searches to identify perpetrators of illicit drugs trafficking and use.

Illicit drugs trafficking is a whole mechanism involving the production, trade, transport, distribution and sale. The actions of the judicial bodies specialized in the fight against drugs must systematically target all the stages of the illicit activity that takes place inside the networks of traffickers.

The criminal investigation should not be limited to the detention or arrest of a single trafficker and the confiscation of his drugs, the aim is to dismantle the entire drug distribution network, which can only be achieved if the criminal activity of all persons involved in the network is proven.

Keywords: *forensic, tactical rules, criminal investigation, illicit drugs trafficking and use*

JEL Classification: [K14]

1. Introduction

Illicit drug production and trafficking represent one of the most active forms of manifestation of transnational organized crime.

Thus, illicit drug trafficking represents a whole mechanism involving production, marketing, transportation, distribution and sale. The actions of judicial bodies specialized in the fight against drugs must systematically target all stages of the illicit activity that takes place inside the networks of traffickers.

The forensic investigation undertaken must not be limited to the apprehension or arrest of a single trafficker and the confiscation of the drugs possessed by him, the objective being the dismantling of the entire drug distribution network, something that can only be achieved if the criminal activity of all the people involved in the network is proven.

The criminal prosecution in the case of crimes in the field of drug trafficking and illicit drug consumption is carried out, in accordance with the provisions of the Article 11 paragraph (1) (2) of the Government Emergency

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Ordinance no. 78/2016 from the 16th of November 2016 for the organization and functioning of the Directorate of Investigation of Crimes of Organized Crime and Terrorism (DICOCT), by the prosecutors of the Section for Combating Drug Trafficking of DIICOT within the Prosecutor's Office next to the High Court of Cassation and Justice.

The competent criminal investigation bodies are notified in relation to the commission of crimes in the field of drug trafficking and illicit drug consumption by complaint or denunciation, by acts concluded by other ascertaining bodies provided for by law or ex officio. With regard to the competence to judge in the first instance the offences in the field of drug trafficking and illicit consumption, this belongs to the Courts.

In order to detect traffickers and drugs, the specialized police bodies use various means that depend on the complexity of the phenomenon, the way of organization and the speciality of the bodies with attributions in this field, their professional capacity and competence and the experience they have in this kind of activity.

2. Carrying out searches in the case of the crimes of illicit drugs trafficking and use

The forensic investigation of crimes in the field of drug trafficking must establish the constitutive elements of the crime involving, in addition to establishing the object and subject of the crime, the determination of the ways of committing the act and their circumscription in the ways provided by law no. 143/2000 regarding the prevention and combating of illicit drug trafficking and consumption.

Also, the forensic investigation process of drug trafficking also aims to clarify the following aspects related to (Ruiu, 2013, p. 163): trafficking itself, facilitating trafficking and favouring trafficking and consumption.

According to the provisions of Article 156 paragraphs (1) and (2) of the Romanian Criminal Procedure, the searches can be home, body, of some vehicles and computer searches, these being carried out with respect for dignity, without constituting disproportionate interference in private life (Scheb, Scheb II, 2011, 451).

In the activity of investigating the crimes of illicit drugs trafficking and use, when there are indications of the existence of drugs hidden in certain places, of drug traffickers or drug users who evade the criminal prosecution phase or are wanted by the judicial bodies, they proceed to carry out home searches (Moise, Stancu, 2017: 154).

At the same time, home searches are carried out when there are clues that a drug-related crime has been committed or is being prepared to be committed in a home.

We emphasize that drug trafficking is likely to be carried out in many places, which can be subject to a home search, such as: border crossing points and the

surrounding lands, where drugs can be abandoned or hidden; lands cultivated with plants containing drugs; factories and units that produce drug-based medicines; medical-pharmaceutical units such as hospitals, polyclinics, dispensaries and pharmacies that own and prescribe drugs based on drugs; veterinary medical-pharmaceutical units; ports, airports and train stations; means of transport, accommodation and entertainment such as hotels, restaurants, bars, discotheques and casinos (Raskin White; Jackson; Loeber, 2009, 433-446).

In relation to the purpose of the home search in the case of investigating drug trafficking and illicit consumption, and with the data obtained regarding the person and the place that will be searched, the criminal investigation body that conducts the activity establishes the competence of the team that will act. The number of participants differs, from case to case, being determined by a series of factors such as: the nature of the objects, documents and values sought, the degree of difficulty involved in discovering them, the extent and location of the places where they are carried out, the dates what characterizes the personality of the person suspected of illicit drug trafficking and consumption whose home is being searched. As a rule, the following participate in the search: the criminal investigation body, assistant witnesses, the person searched or his representative, the representative of the unit - when the search is carried out at the workplace - specialists from different fields, in the situation when their presence is required and the lawyer of the searched person (Boville, 2004, 76-81).

In the case of home searches for crimes related to drug trafficking and illicit consumption, the presence of specialists during the search may be requested, either by the use of a special device for detecting toxic substances, narcotics and other precursors, or by preventing risks related to handling, lifting and transporting objects containing drugs or other substances with psychoactive effects (Boville, 2004, 63-64).

In order to achieve the purpose of the home search, in relation to its object and the environment in which it is carried out, the team must be equipped with the necessary technical means, instruments, tools, which are in the equipment of universal forensic kits or mobile forensic laboratories. In other cases, the use of lighting sources, sets of universal keys and spanners, tools for forcing doors and closing systems is required (Winter, 2008, 82-86).

In the home search carried out in the case of crimes in the field of drug trafficking, in addition to the forensic kit, the following forensic technical means or specialized kits will be used: kits with reagents for drug testing; the control probe or the periscope for checking hard-to-reach places in vehicles; the equipment required for x-raying objects in which drugs are hidden (Moise, Stancu, 2017: 150).

We point out that in the process of forensic investigation of illicit drug trafficking and consumption, drug testing kits contain tubes with reagents that

allow the identification of some drugs, including hashish, marijuana, LSD, substances from the group of opiates, amphetamines (Winter, 2008, 89-91).

The home search and the computer search can be ordered during the criminal investigation phase, at the request of the prosecutor, by the judge of rights and freedoms from the court that would have the competence to judge the case in the first instance or from the corresponding court at its level in whose constituency the headquarters of the prosecutor's office is located, which includes the prosecutor who carries out or supervises the criminal investigation.

During the trial phase, the home search is ordered *ex officio* or at the prosecutor's request, by the court charged with judging the case. The computer search is ordered during the trial phase by the court, *ex officio* or at the request of the prosecutor, the parties or the aggrieved person, when the search of a computer system or computer data storage medium is necessary for the discovery and collection of evidence. The warrant to carry out the IT search and the home search ordered by the court is communicated to the prosecutor, who proceeds with its implementation.

If the prosecutor cannot participate in the search, he will delegate in writing the police authorities to carry out the search, since the crimes of illicit drugs trafficking and use are within the exclusive competence of the prosecutor.

The time of carrying out the home searches must be chosen with great care, they are usually carried out when the investigations reach the stage where there is the belief that the maximum amount of evidence will be obtained (Moise, Stancu, 2017: 154).

The approach to the place where the home search is to be made implies, in addition to a thorough preparation, measures capable of annihilating the actions to prevent entry into that place. The transition to conducting the home search must be done only when its purpose cannot be achieved through other criminal investigation activities.

Knowing the person to be searched takes on a very special significance. Obtaining data regarding the way of life, the places she frequents, the people in whose company she is reported, her passions or vices becomes mandatory in these cases.

It is required that the judicial bodies carry out a prior surveillance of the area, and the entry into the home must be quick, in order not to give the people who are there the opportunity to run away, throw away or hide the drugs or other important means of evidence in question, such as money, documents or objects (Stancu, 2011: 326).

The home searches carried out by the judicial bodies in the case of drug offences are aimed at achieving the following objectives (Stancu, 2011: 326-327): the discovery of drugs or toxic products or substances; the discovery of installations or equipment used for the production, conditioning or testing of drugs; the discovery of raw materials or intermediate products, including

substances used in the production and refining of drugs; catching some drug traffickers hiding in a certain place; the identification and collection of documents regarding the way of procuring drugs, their origin, the persons involved; the discovery of goods or values obtained as a result of the recovery of drugs from illicit traffic; the discovery of other assets or valuables held contrary to the legal provisions in force, such as weapons, ammunition, explosive materials, counterfeit coins.

When carrying out the home search, in the means of transport, such as ships, aircraft, railway wagons, buses, trucks, cars, the use of specialists is required in order to discover the skillfully arranged hiding places, avoiding the risk of their damage, due to ignorance of the way to dismantle some assemblies. Thus, in these situations, the dog trained to detect drugs can be successfully used, facilitating their discovery (Moise, Stancu, 2017: 154).

In the case of vessels and aircraft, the judicial bodies will search the crew's cabins, the objects they have on them, the common parts of the ship, the shipping storage rooms, the dining rooms, the places intended for the storage of food, crew goods and passengers' luggage.

With regard to railway transport, judicial bodies will search trains, in particular sleeping or luggage berths, toilets, electrical panels, waste bins, ashtrays, heating systems and compartment benches and seats.

If drug addicts are found at the place of the home search, who, due to the consumption of large quantities of consumed drugs, are in a serious state, withdrawal, they are urgently transported to the hospital in order to provide specialized medical help, not before being identified, mentioning in the home search report the condition in which they were found at the place of the home search and the measures taken (Moise, Stancu, 2017: 154-155).

We noticed that during the home search, together with the narcotic substances, other criminal objects can be discovered and seized, such as syringes and ampoules used or containing traces of drugs, dishes suspected to have contained drugs, cigarette remains, as well as documents related to the case investigated (Stancu, 2011: 328).

All the places suitable for hiding drugs, the annexes, the surroundings are searched, and the checks are extended to the vehicles and the surrounding areas. If the search takes place in the court, it is advisable for the judicial authorities to use dogs trained for the detection of drugs, because their hiding places are various.

The substances or products picked up, properly packed and sealed must be promptly sent to specialized drug analysis laboratories, to determine whether or not they contain narcotic substances (Buzatu, 2012: 309-310).

In the case of home searches carried out at the homes of drug addicts who are under the influence of drug consumption, the judicial bodies must call upon

the doctors to provide specialized assistance and, if necessary, order hospitalization.

After entering the home, presenting the quality and presenting the home search warrant, the judicial bodies will identify and perform a body search of all the persons found in the home.

We consider that it is mandatory to carry out a body search, because those involved in drug trafficking may have some of the drugs that are the object of illicit trafficking, as well as weapons or firearms, or substances with which, at the first favourable opportunity, they will not hesitate to attack those who physically search them.

According to the provisions of Article 165 (1) of the Romanian Criminal Procedure Code¹, the body search involves the external physical examination of a person, the oral cavity, nose, ears, hair, clothing, objects that a person has on him or under his control, at the time of the search. Moreover, the Article 165 (2) of the Romanian Criminal Procedure Code stipulates that in case there is a reasonable suspicion that by conducting a body search, traces of the crime, corpora delicti or other objects that are important for finding out the truth in the case will be discovered, the judicial bodies or any authority with powers to ensure public order and security proceed to performing it.

We specify that the body search extends to the offender's luggage and car. We underline that investigators can find on the offender narcotic or toxic substances or products, cigarettes that contain narcotic herbs, drinks in which such substances have been introduced, food used as hiding places, but also various documents related to notes of payment for hotel accommodation or for various services provided by the criminal, maps on which the routes are marked, directories with names of people, addresses, phone numbers and others.

If there are solid indications that a person carries hidden drugs in his body, the criminal investigation body orders the performance of medical examinations, such as, for example, the physical examination, carried out in accordance with the provisions of the Article 190 of the Romanian Criminal Procedure Code.

The physical examination of a person involves the external and internal examination of his body, as well as the taking of biological samples (Buquet, 2011: 70-75). The criminal investigation body must request, in advance, the written consent of the person to be examined. In the case of persons lacking legal capacity, the consent to the physical examination is requested from the legal representative, and in the case of those with limited legal capacity, their written consent must be expressed in the presence of their legal guardians. In the absence of the written consent of the person to be examined, of the legal representative or of the consent of the legal guardian, the judge of rights and liberties orders, by decision, at the reasoned request of the prosecutor, the

¹ Law no. 135/2010, Published in the Official Gazette of Romania, Part I, no. 486 from 15 July 2010.

physical examination of the person, if this measure is necessary for establishing facts or circumstances that ensure the proper conduct of the criminal prosecution phase or to determine if a certain trace or consequence of the crime can be found on the body or inside the body.

According to the provisions of Article 190 (5) of the Romanian Criminal Procedure Code, if the examined person does not express his consent in writing and there is an emergency, and obtaining the judge's authorization would lead to a substantial delay in the criminal investigations, to the loss, alteration or destruction of the evidence, the criminal investigation body can order, by ordinance, the performing of the physical examination (Palmiotto, 1994: 177-181).

The ordinance of the criminal investigation body, as well as the minute in which the activities carried out during the physical examination are recorded, are immediately submitted to the judge of rights and freedoms for the purpose of validating the physical examination or excluding the evidence obtained through the physical examination.

In order to record the results of the searches in the case of the crimes of illicit drugs trafficking and use, the search team must have a camera or video-audio recorder and must conclude a report to which photographs, video recordings, sketches, or drawings can be attached.

Conclusions

We emphasize that all categories of searches in the case of the crimes of illicit drugs trafficking and use must be carried out promptly, any delay having as a consequence the loss of the favourable moment, missing the element of surprise, and the judicial bodies must not neglect the issues of detail. It is advisable that before the searches are launched, their purpose should be thoroughly analyzed and assessed if it cannot be achieved through other, more effective evidentiary procedures.

In the investigation of the crimes of illicit drugs trafficking and use, situations often arise when, in order to clarify some circumstances of the case, it is necessary to pick up some objects and documents related to the actions taken to commit the crime.

Among the documents that can be used to find out the truth in the case of the investigation of the crimes of illicit drugs trafficking and use, we can mention: prescriptions with a dry stamp in which unrealistic diagnoses are mentioned; notebooks for recording the use of forms with a dry stamp; registers for recording the movement of narcotic products and substances in pharmacies; the minutes of restitution of unused narcotics to pharmacies; the record of drug addicts communicated by the health units; the documents drawn up on the occasion of the entry-exit of the persons investigated for drug trafficking, including the documents showing the date of entry into the national territory, the border point

and the duration of the visit; different notes in phone books, notebooks or personal digital assistants of the searched persons.

We emphasize that the results of the searches are recorded in the minutes, as well as in photos, sketches or video recordings of the drugs, the people searched, the house, as annexes to the minutes.

Moreover, as the main means of recording the results of the searches in the case of the crimes of illicit drugs trafficking and use, the minutes must be completed at the place of the search, immediately after the end of these activities, in compliance with the legal requirements of the rules of forensic tactics.

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